

REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejection and objection present in the outstanding Office Action dated December 16, 2004 in light of the following remarks.

The abstract is objected to with regards to MPEP 608.01(b). The specification, specifically the abstract, has been amended to address this issue. Reconsideration and withdrawal of this objection is respectfully requested.

Claims 1-16 were pending in the instant application at the time of the outstanding Office Action. Of these claims, Claim 1 is an independent claim; the remaining claims are dependent claims. Claims 1 and 14-15 have been rewritten. Applicants intend no change in the scope of the claims by the changes made by these amendments. It should also be noted these amendments are not in acquiescence of the Office's position on allowability of the claims, but merely to expedite prosecution.

Claims 1-16 stand rejected under 35 US C § 101 as being directed to non-statutory subject matter. Reconsideration and withdrawal of this rejection is respectfully requested as Claim 1 now recites "a computer-implemented method".

Claims 14-16 stand rejected under 35 US C § 112. Reconsideration and withdrawal of this rejection is respectfully requested as Claims 14 and 15 have been rewritten to correct a typographical error which formed the basis for this rejection.

Claims 1-16 stand rejected under 35 USC § 102(e) as being anticipated by Herz et al. Reconsideration and withdrawal of this rejection is respectfully requested.

As best understood, the invention set forth by Herz contemplates a system with the ability to automatically determine which products a shopper would be most likely to buy, and which offers a vendor should make available to the shopper in order to maximize the vendor's profit (paragraph 0002, lines 1-5). The system constructs and updates shopper profiles based on specific demographic information and history of their shopping behavior (paragraph 0002, lines 5-9). These profiles are used to determine products and offers to present to shoppers (paragraph 0002, lines 9-13).

The price and product determination system of Herz is in stark contrast to the present invention. As discussed in the specification and in the independent claim, the instant invention uses configuration data provided by an Internet merchant that operates the web site to determine the price and offer that is made available to customers. Herz contends that his system, not an Internet merchant, tracks the configuration data that is used to determine prices and products offered to shoppers. Additionally, the system of Herz does not randomly sample the visitors to the website. Rather, visitors are simply sampled and grouped. The specification and claims of the instant invention distinctly and clearly state that visitors to the web site are randomly sampled based on configuration data.

It is respectfully submitted that Herz et al. clearly falls short of present invention (as defined by the independent claims) in that, *inter alia*, it does not disclose receiving configuration data from an Internet merchant that operates the web site. Additionally,

Herz et al do not disclose randomly sampling visitors to the web site according to the configuration data. Accordingly, Applicants respectfully submit that the applied art does not anticipate the present invention because, at the very least, "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under construction." *W.L. Gore & Associates, Inc. v. Garlock*, 721 F.2d 1540, 1554 (Fed. Cir. 1983); *see also In re Marshall*, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978).

In view of the foregoing, it is respectfully submitted that independent Claim 1 fully distinguishes over the applied art and is thus allowable. By virtue of dependence from Claim 1, it is thus also submitted that Claims 2-16 are also allowable at this juncture.

The "prior art made of record" has been reviewed. Applicants acknowledge that such prior art was not deemed by the Office to be sufficiently relevant as to have been applied against the claims of the instant application. To the extent that the Office may apply such prior art against the claims in the future, Applicants will be fully prepared to respond thereto.

/

/

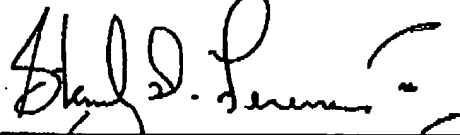
/

/

Atty. Docket No. 696.001

In summary, it is respectfully submitted that the instant application, including Claims 1-16, is presently in condition for allowance. Notice to the effect is hereby earnestly solicited. Applicants' undersigned attorney would welcomes further discussion with the Office in the event there are any further issues in this application.

Respectfully submitted,



Stanley D. Ference III
Registration No. 33,879

Customer No. 35195
FERENCE & ASSOCIATES
409 Broad Street
Pittsburgh, Pennsylvania 15143
(412) 741-8400
(412) 741-9292 - Facsimile

Attorneys for Applicants